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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

(b)(3)

OGC-87-50889

26 March 1987

Paul Stevens
NSC Legal Advisor
The White House
Washington, D.C.

Paul:

These are the materials I have promised you. After you have taken a look at them, let me know if you need anything else.

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Attachments

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WASHINGTON

~~CONFIDENTIAL~~

March 29, 1979

MEMORANDUM FOR

THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
CHAIRMAN, JOINT CHIEFS OF STAFF
THE DIRECTOR OF CENTRAL INTELLIGENCE
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

SUBJECT: SCC Meeting on Legislative Charters, March 27, 1979 (C)

Attached is a copy of the Summary of Conclusions for the Special Coordination Committee meeting of March 27 on Legislative Charters, which the President has approved. (C)

ZB

Zbigniew Brzezinski

Attachment

~~CONFIDENTIAL~~
Review on March 27, 1983

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Time and Place: 9:30 p.m. - 10:15 p.m.,
White House Situation Room

Subject: Legislative Charters

Participants:

Marilyn Haft, Dep Counsel/VP

State:
Warren Christopher
Deputy Sec of State

Defense
Charles Duncan,
Dep Secretary of Defense
Deanne Siemer, General
Counsel

Justice
Ken Bass, Attorney, Office
of Legal Counsel
Frederick Baron, Special
Asst to the AG, Intell

OMB
Randy Jayne, Assoc Dir for
National Security & Internal
Affairs
Arnold Donahue, Director
Intelligence Division

White House
Zbigniew Brzezinski (Chairman)
David Aaron
Robert Lipshutz

NSC
Sam Hoskinson
Robert Kimmitt

CIA
Frank Carlucci, Deputy Director
[redacted] Associate
General Counsel

FBI
James Nolan, Special Agent

JCS
Lt. General William Smith

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SUMMARY OF CONCLUSIONS

The SCC met to consider the basic intelligence charter provisions concerning covert action. The discussion was based on an issues paper prepared by CIA. (C)

The following decisions were reached:

1. The Hughes-Ryan Amendment should be repealed and provision made for reporting on covert action to only the two intelligence committees. It was recognized that this would most likely require Presidential intervention with the Congressional leadership. (C)

CONFIDENTIAL [redacted] March 27, 1983

[redacted]

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2. Differentiation should be made between different categories of special activities and the level and type of approval required for each. The Legislative Charters Working Group is to define alternatives for SCC consideration. (C)

3. "Important to national security" should be the basic standard for covert action that requires a Presidential Finding. A lower standard should be considered for other categories of special activities. (C)

4. It is inappropriate for Congress to specify that Presidential Findings must be in writing. This is not a major issue but the past practice of written findings and Presidential intention to do so in the future should suffice. (C)

5. Notice to Congress of Presidential Findings should remain "in a timely fashion" rather than on a "prior" to implementation basis. (C)

6. It is inappropriate for Congress to mandate how the NSC should conduct its business in matters such as review requirements, committee membership and attendance requirements. We would consider later whether we would accept a requirement that the President set forth these arrangements a la E.O. 12036. (C)

7. The only statutorily prohibited covert activity should be assassination. This ban should be modeled on the E.O. 12036 provision and included in the intelligence charter legislation. (C)

8. The issue of applying standards for the approval and reporting to Congress of counterintelligence activities similar to those proposed in S.2525 for special activities was deferred until the SCC considers the charter provisions for counterintelligence activities. (C)

9. Sensitive foreign intelligence activities should not require similar statutory approval and reporting standards as does covert action. (C)

In conclusion it was agreed that April 30 is the target date for completion of the Administration's positions on intelligen charter legislation. The remaining agenda was discussed and will be amplified in a separate NSC memorandum. (C)

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WASHINGTON

FIDENTIAL

March 29, 19

MORANDUM FOR

THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
CHAIRMAN, JOINT CHIEFS OF STAFF
THE DIRECTOR OF CENTRAL INTELLIGENCE
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

BJECT: SCC Meeting on Legislative Charters, March 27, 1979 (C

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Zbigniew Brzezinski

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eview on March 27, 1983

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A-32 Page — The New York Times — 3/19/80 Date

Turner Says Congress Units Were Told of All Covert Intelligence Actions

By CHARLES MOHR
Special to The New York Times

WASHINGTON, March 18 — Adm. Stansfield Turner, the Director of Central Intelligence, said today that he had never withheld knowledge of covert American intelligence operations from Congressional committees authorized to receive such reports.

But Admiral Turner, testifying before the House Intelligence Committee, said that one reason that he firmly opposed a legal obligation to give prior notice of such clandestine actions to the committees was that it would permit Congress to make an "excessive intrusion" into Presidential decision making.

Admiral Turner argued that the requirements of Congressional oversight would be fully met if the authorized committees learned of covert operations only after they were completed and if they received "sufficient information to allow a judgment as to legality and propriety."

Disclosure Threat as Veto

The head of the Central Intelligence Agency said, "Every individual with access to prior to notification would have the power to veto the activity through a threat to disclose it."

Admiral Turner told the House Committee today that his testimony before the Senate Intelligence Committee on Feb. 21 had been "seriously misrepresented in the press." News accounts centered on his statement that it was "not correct" that at least some members of Congress had been informed of all covert actions by the C.I.A.

He went on to say that in the last three years, all covert actions except one were described to authorized committees before being carried out. He said that in the case of the exception, Congress was notified within hours "of the risks being behind us." Other informed sources said that the exception was the case of six Americans who were spirited out of Iran with the help of the Canadian Embassy.

While Admiral Turner said today that the press was to blame for misinterpreting his February remarks to the Senate committee, Senate sources said that he had told the Senate committee in closed session that he had not understood the question that led to his controversial answer, and thus admitted that he had given a misleading response. He told the House committee today that only in closed, secret session could he fully explain his answer to the Senate committee.

Representative Les Aspin, Democrat of Wisconsin, said that he was "very disturbed" by Admiral Turner's testimony. Mr. Aspin said Congress did not have and did not seek a veto power on covert operations. Prior notification, he said, would require intelligence agency planners to justify ideas that sometimes "mesmerize" those involved in undercover work but seem "crazy" to anyone else.

He cited a plan that was once advanced within the C.I.A. to give a disease-infested diving suit to Cuba's leader, Fidel Castro.

Admiral Turner responded that "what you have just described is a process of involving Congress in decision making" because it involved a Congressional effort to achieve "better decisions."

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CIA Information Withheld From Hill, Turner Testifies

By George Lardner Jr.
Washington Post Staff Writer

CIA Director Stansfield Turner said yesterday that the administration has been holding back more information from the Senate and House intelligence committees than its members previously suspected and that the White House intends to continue the practice.

Testifying before the Senate committee on a proposed legislative charter for the CIA, Turner assailed a provision that would require advance notice to Congress of all "significant" intelligence activities as "unnecessary, improper and unwise."

He also voiced strong opposition to more than half a dozen sections of the Senate proposal, including one that would entitle the two intelligence committees to whatever after-the-fact information they deem necessary for proper oversight of the U.S. intelligence community.

Sen. Birch Bayh (D-Ind.), the committee chairman, expressed surprise at the breadth of the administration's complaints.

Sen. Walter D. Huddleston (D-Ky.), who has spent several years in an effort to reach agreement with the CIA and the White House, said he feared that their bluntly stated position could jeopardize the measure.

Several committee members said they had been under the impression that the administration has been notifying them in advance of all covert actions and other significant undertakings—with one exception—since President Carter took office.

That is not correct," Turner told them. He did not elaborate, saying that, "We are on the dangerous ground of a public forum." But he indicated that information had been withheld more than once, in cases where he and the president felt that advance notice to the intelligence committees might jeopardize the lives of the agent or agents involved.

Under questoning by Sen. Adlai E. Stevenson (D-Ill.), the CIA director acknowledged that he had testified at his confirmation hearing that he expected "no difficulty" in complying with an advance-notice requirement embodied in Senate Resolution 400, which created the Senate panel.

But the resolution does not have the force of law, and Turner insisted that he had never endorsed" it. He told Stevenson that he had said only that he would have no difficulty "in trying to comply with it," and not that he had promised to do so.

Turner maintained that Carter is still strongly committed to enactment of a legislative charter for the CIA and the rest of the U.S. intelligence community, but Turner followed up with what amounted to a gloomy assessment of its prospects.

"This is, as we all know, a short legislative year," he told the senators," and there is some question as to whether both houses of the Congress will be able to take up and pass the charter even if all the outstanding differences between this committee and the administration can be settled quickly."

Offering one concession after another, Huddleston said he thought that most of the disagreements could be resolved. For example, he said he thought there would be no problem in cutting back the Freedom of Information Act even further than the Senate committee has been planning.

The CIA has been seeking a virtual blanket exemption from the Freedom of Information Act for its operational and technical files, but Turner said the administration wants similar "relief" for the National Security Agency, the FBI "and other intelligence agency components."

"An area of even more serious concern," he added, is a provision in the Senate proposal that would make unauthorized disclosure of the names of CIA operatives a crime only for people, such as former CIA officers, who have authorized access to such information. The CIA wants criminal penalties also made applicable to outsiders, such as journalists.

Huddleston said he hoped some accommodation could be reached in this area, too. But he said he thought the issues of prior notice and guaranteed access to intelligence agency information "crucial" to proper congressional supervision.

Turner indicated that the White House does not intend to relent on either point. "I believe the president feels very firmly about these two issues," he told the committee.

Huddleston pointedly noted that CIA Deputy Director Frank Carlucci, in testimony Wednesday before a House subcommittee, had argued that the CIA should not be held to the full rigors of the Freedom of Information Act, since it was already supplying the two congressional intelligence committees "with whatever information they need" to guard against abuses.

"Do you disagree with that?" Huddleston asked the CIA director.

"No," Turner replied.

STANSFIELD TURNER
... gloomy assessment of charter

"But that [the information to be supplied] would be determined by you and the agency, not by Congress?" Huddleston pressed.

Turner did not reply directly, saying only that he thought that the administration's past practice of sharing information with the two intelligence committees—without being required to do so by law—was satisfactory.

He submitted an administration amendment that would require the intelligence agencies to keep the House and Senate intelligence committees "fully and currently informed" about their activities—but not about their "sources and methods." The committees would be told of "significant" clandestine operations "in a timely fashion," but not necessarily in advance.

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W. Post 3/12/80

CIA Operations Proposal Splits Hill Panel

By George Lardner Jr.
Special to The Washington Post

The battle over the law governing the Central Intelligence Agency's covert operations broke out yesterday in the House Foreign Affairs Committee with a conflict on the crucial issue of when Congress should be told of them.

A Foreign Affairs subcommittee last week approved a proposal that would require advance notice, but Rep. Clement J. Zablocki (D-Wis.), the committee chairman, countered yesterday afternoon with an amendment that would allow the president to ignore the rule whenever he thought it necessary.

Both plans would sharply reduce the number of congressional committees that would share the secrets.

The current law, enacted in 1974 as an amendment to the Foreign Assistance Act, calls for reports to all the "appropriate committees" of Congress, a description that now covers seven House and Senate panels. The new legislation would restrict such notices to the House and Senate Intelligence committees.

The 1974 law, known as the Hughes-Ryan amendment, is somewhat ambiguous on when the reports are to be made. Conflicting interpretations, although written down years ago, have surfaced in the past week.

A study by the Congressional Research Service, conducted in 1975 but just made public by Rep. Les Aspin (D-Wis.), concluded that advance notice is already required under Hughes-Ryan.

The Justice Department then made public a portion of a secret opinion drawn up in 1977 for then-Attorney General Griffin B. Bell, which drew exactly the opposite conclusion. Lawyers for the Justice Department's Office of Legal Counsel held that it was "clear from the legislative history (of Hughes-Ryan) that reports to Congress need not occur before the operation is conducted."

A Justice Department spokesman said the rest of the 10-page opinion on the Hughes-Ryan amendment was being kept secret for "strategic reasons." He denied that the portion dealing with the prior-notice issue was being released with an eye on the congressional debate. He said it was made public this week at Bell's request simply by coincidence, as the result of a newspaper interview with the former attorney general.

In practice, the CIA generally notifies the House and Senate Intelligence committees, and several other panels such as Foreign Affairs, in advance of its covert operations. But President Carter has come out strongly against writing the practice into law, contending that this would encroach on his constitutional prerogatives.

The dispute has already led to an impasse between the White House and the Senate Intelligence Committee over a legislative charter for the CIA. The charter would also repeal Hughes-Ryan, but progress on the charter legislation has been slow.

In the House Foreign Affairs Committee, Rep. Lee H. Hamilton (D-Ind.) sponsored the subcommittee version that would require notification to Congress of covert operations "prior to the initiation of such operation."

Zablocki moved yesterday to tack on a proviso that would permit the president to wait whenever he decides that prior notice would "prejudice" the operation itself, the national security, or the lives of the individuals involved in the operation. An aide to Hamilton indicated he feels exceptions should be made only when lives might be endangered. The issue may come to a vote today during the full committee's markup of this year's foreign aid bill.

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Washington Post 2/8/80

Senators Want Tighter Grip on CIA, More Disclosure

By George Lardner Jr.
Washington Post Staff Writer

The Senate Intelligence Committee is planning to introduce its own charter for the CIA today after reaching an impasse with the Carter administration.

Of several disagreements, the biggest boils down to a question of "executive privilege," according to both administration and congressional sources.

The White House, sources said, is unwilling to grant Congress the legal right to demand information about U.S. intelligence activities. Ranking members of the Senate committee consider this crucial to proper oversight of the nation's intelligence agencies. They also want a broader pledge of advance notice of covert operations than President Carter is willing to provide by law.

The senators also want to prohibit the paid use of American academics, journalists and clergymen as intelligence agents. Carter does not want any legislation on the issue beyond perhaps some hortatory language about the importance of maintaining the "independence" of the three professions.

Both sides have agreed to paper over the differences when Sens. Walter D. Huddleston (D-Ky.) and Charles McC Mathias (R.-Md.) introduce a committee-proposed charter for the intelligence community this afternoon. The administration has reportedly agreed to send up a letter voicing its approval of "a vast majority" of the provisions in the bill and expressing confidence that remaining differences can be worked out.

After working for nearly two years on a draft, the White House will not send up a charter of its own but will seek instead to tailor the Senate bill more to its liking. "There is much more agreement than disagreement" between the two sides, said a government lawyer.

The White House and the Senate committee have agreed on provisions that would:

- Allow the FBI, as part of its counter-intelligence operations in this country, to conduct "black bag jobs" (burglaries) and to open mail in cases involving suspected terrorists or agents of foreign powers. Such activities would be authorized by secret warrants issued by a special court.
- Permit the CIA to conduct burglaries and carry out wiretaps against Americans abroad—even if they are not suspected of any wrongdoing—to obtain intelligence information the government thinks it should have. These activities would also have to be authorized by the special court.
- End public access to countless CIA and other intelligence agency documents by creating a virtually blanket exemption in the Freedom of Information Act for operational intelligence files.
- Cut off reporting of covert operations to any congressional committees except the Senate and House Intelligence panels.

Of the three major areas of disagreement, Senate Intelligence Committee Chairman Birch Bayh (D-Ind.) says: "We may have a standoff. Then we'll just have to see where the votes are."

Huddleston said he felt there was still "rom for an accommodation."

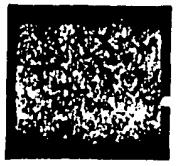
The Senate committee reportedly wants an explicit, statutory right of "full access" to any intelligence agency files. Carter is said to feel this would encroach on his executive powers and does not want an obligation to share government secrets with Congress written into law.

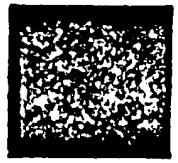
The senators also want "prior notice" of significant covert operations, but the president is opposed to such a rule unless acceptable language providing for exceptions can be drafted.

Bayh said yesterday that he felt enough concessions to the administration have been made already and that strong congressional oversight authority was "indispensable."

Bayh also said he thought it important to establish a rule of law governing use of academics, journalists and clergymen.

Carter wants to stick with CIA guidelines, which can be changed more easily. Current rules forbid any "secret paid or unpaid relationship" with American clergymen, but allow "personal service contracts and other continuing relationships" with academics, including operational uses abroad. For the press, the rules prohibit "any relationship" with "accredited" U. S. journalists for the purpose of conducting intelligence activities—unless the CIA director decides to make an exception.





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